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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

TIMOTHY HOWARD,

CASE NO. 1:11-cv-00101-AWI-SKO PC

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION  
FOR LEAVE TO FILE A SECOND AMENDED  
COMPLAINT

v.

D. L. DeAZEVEDO, et al.,

(Doc. 31)

Defendants.

Plaintiff Timothy Howard, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 20, 2011. On December 26, 2012, Plaintiff filed a motion seeking leave to amend. Fed. R. Civ. P. 15(a). Defendants did not file a response. Local Rule 230(1).

Plaintiff amended once as a matter of course on August 17, 2011, and therefore, he may now amend only with leave of court. Fed. R. Civ. P. 15(a)(1), (2). While leave to amend should be freely given when justice so requires, here no such showing has been made. Fed. R. Civ. P. 15(a)(2).

Plaintiff’s first ground for seeking leave to amend is to add facts. Plaintiff’s amended complaint survived a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6), and it is not deficient with respect to Plaintiff’s present claims.

Plaintiff’s second ground for amendment is the deletion of issues pertaining to claims which were dismissed, to avoid jury confusion. This is a non-issue, as Plaintiff’s claims will be framed for the jury via evidence at trial, of which a copy of the pleading is not included; jury instructions; and a verdict form. It is entirely unnecessary to amend to delete claims or parties in an effort to aid the jury.

1 Finally, Plaintiff seeks to add a state law claim against Defendant DeAzevedo for violating  
2 section 118.1 of the California Penal Code, which prohibits peace officers from filing false reports.  
3 Plaintiff does not have a private right of action against Defendant DeAzevedo for violation of section  
4 118.1 and allowing Plaintiff to amend to add the claim would be futile. Simpson v. Feltsen, No.  
5 2:09-cv-00302-MSB, 2010 WL 1444487, at \*6 (E.D.Cal. Apr. 9, 2010); Young v. City of Visalia,  
6 687 F.Supp.2d 1155, 1167 (E.D.Cal. Jan. 15, 2010); Jackson v. City of Pittsburg, No. C 09-01016  
7 WHA, 2009 WL 1684701, at \*2 (N.D.Cal. Jun. 12, 2009); Lee v. Scribner, No. 1:05-cv-00802-  
8 OWW-WMW (PC), 2009 WL 1211400, at \*10 (E.D.Cal. May 1, 2009); Flowers v. County of  
9 Fresno, No. CV F 09-0051 LJO GSA, 2009 WL 1034574, at \*11 (E.D.Cal. Apr. 16, 2009).

10 For these reasons, Plaintiff's motion for leave to amend is HEREBY DENIED.

11  
12 IT IS SO ORDERED.

13 **Dated: January 29, 2013**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE